

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	
Commission's Rules to Provide for the	)	PR Docket No. 89-552
Use of the 220-222 MHz Band by the	)	
Private Land Mobile Radio Service	)	DOCKET FILE COPY ORIGINAL
	)	
Implementation of Sections 3(n) and	)	
332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Implementation of Section 309(j) of the	)	
Communications Act -- Competitive	)	PP Docket No. <u>93-253</u>
Bidding, 220-222 MHz	)	

**SUPPLEMENTAL COMMENTS**

Securicor Radiocombs Ltd. ("Securicor"), by its counsel, submits the following supplemental comments on the Commission's proposal to eliminate the 40-mile rule for the 220 MHz radio service.<sup>1</sup> Securicor is the leading provider of the highly spectrally-efficient Linear Modulation, or "LM," equipment in the 220 MHz band.<sup>2</sup> As noted in the Public Notice

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<sup>1</sup> Public Notice, PR Docket No. 89-552, *Commission Seeks Supplemental Comment on Request to Eliminate 40-mile Rule for 220 MHz Radio Service*, FCC 96-448 (Nov. 19, 1996).

<sup>2</sup> On December 3, 1996, Securicor closed its previously-announced transaction with INTEK Diversified Corp. ("INTEK"). As a result, Securicor Radiocombs now operates as a subsidiary of INTEK. INTEK is also the parent company of Roamer One, Inc., a manager and service provider in the 220 MHz band. Roamer One has previously submitted Supplemental Comments in this Docket urging repeal of the 40 mile rule.

proposing to eliminate the 40-mile rule, Securicor has previously expressed its support in this Docket for the repeal of that Rule. Indeed, as shown in the earlier filings in this Docket, the repeal of the 40-mile rule now imposed on 220 MHz licensees clearly will serve the public interest by promoting the widespread availability and diversity of 220 MHz service, by enabling 220 MHz licensees to realize the economies of scale and operation attributable to system consolidation, by removing regulatory uncertainty associated with the interpretation of the existing provisions of Section 90.739 and by providing a sound basis for Phase I 220 MHz licensees to expand their existing systems, raise capital and participate in the Phase II 220 MHz band auctions. These public interest gains can be realized at no offsetting cost since the 40-mile rule has outlived its intended purpose.

**I. Elimination of the 40-mile Rule Will Serve the Public Interest**

**A. 220 MHz Licensees Can Expand the Availability and the Diversity of Their Service Offerings Upon Elimination of the Rule**

Licensees in the 220 MHz band are capable of offering a vast array of innovative services and enhancing competition in both the PMRS and CMRS marketplaces if freed of unnecessary regulatory encumbrance. The Commission itself has recognized that 220 MHz service has the potential to provide a diverse array of PMRS and CMRS services to its subscribers.<sup>3</sup> Currently, however, regulatory restrictions, including the 40-mile rule, prevent 220 MHz service from realizing its full competitive potential in these and other arenas.

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<sup>3</sup> See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8030-33 (1994) (“*CMRS Third Report and Order*”).

Section 90.739 of the Commission's rules precludes any licensee in the 220 MHz service from holding more than one 220 MHz license within 40 miles of another, unless the licensee can demonstrate that "the additional system is justified on the basis of its communication requirements." To qualify for this exception, the Commission has stated that licensees must demonstrate that outstanding demand exists for their service that cannot be met under the terms of their current license. Among other things, this policy prevents 220 MHz licensees from providing an innovative mix of service offerings. For example, if a licensee seeks to provide trucking companies with dash-mounted mobile service and construction workers with on-site portable units, the rule would not allow a licensee to own systems for both services within the same 40-mile region until it had first reached capacity in one of the services.<sup>4</sup> In the meantime, the market for the other service may have undergone significant changes.

Most 220 MHz licensees do not face technological or other restrictions to providing more extensive and diverse service offerings. The 40-mile rule presents the only impediment to their expansion. Elimination of the rule will significantly enhance the ability of 220 MHz licensees to expand and innovate, and thereby increase competition overall in the mobile radio services market.

B. 220 MHz Licensees Can Realize the Benefits of Economies of Scale Upon Elimination of the Rule

Licensees offering services in the 220 MHz band can reap tremendous benefits in terms of improved efficiency, reduced costs, and less overhead by consolidating two or more systems under centralized management. The administrative, marketing, and operational functions of a 220

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<sup>4</sup> See *Ex Parte Comments of SMR Advisory Group, L.C.* at 11, n. 27 (April 5, 1996).

MHz system, in particular, can typically be performed at lower per-system cost when several systems combine these functions than if the same functions were performed separately for each system. At present, however, the 40-mile rule operates as a significant barrier which restricts licensees from consolidating geographically proximate systems to realize these benefits of scale.

This obstacle impacts many aspects of 220 MHz service. For example, a centralized billing system for several service areas is far more efficient than maintaining the electronic capability for billing for each system. Similarly, the cost of developing one radio advertisement to play in several different service areas is much less expensive than developing a separate advertisement for each individual service area. Moreover, the ability of mobile radio service licensees to offer the combined services of several systems allows both PMRS and CMRS providers to offer a more innovative set of services and appeal to a wider consumer base than the 40-mile rule currently permits.

The use of consolidated management services can not adequately realize the same economies as consolidated system ownership. Individual licensees retain control over and responsibility for their systems whether or not a management agreement is entered into to provide centralized services. At the very least, each individual licensee is bound by terms of his or her license to oversee scrupulously the operations of a manager and ensure that license terms are met. In contrast, consolidating systems under common ownership places both management functions and ultimate compliance responsibility in the hands of the same entity, eliminating the extra oversight effort created by the 40-mile rule.

C. Elimination of the Rule Will Enhance the Ability of 220 MHz Licensees to Expand and Participate in Phase II Auctions

Successful businesses must be able to respond quickly to fluctuating market conditions in the rapidly changing and highly competitive mobile radio services marketplace. If demand increases for a particular service, a licensee must be able to meet that demand in a timely manner or potential customers will go elsewhere. The most effective way to prepare for a rapidly changing marketplace is to anticipate demand based on current market projections and to develop one's system accordingly. As explained above, however, the 40-mile rule prevents proactive and timely expansion of a 220 MHz licensee's systems, forcing the licensee to first develop the excess demand and then seek the capacity to serve that demand. Eliminating this unnecessary delay in servicing customers will enable 220 MHz licensees to expand their systems in a more timely manner.

In addition, the repeal of the 40-mile rule will enable the geographic consolidation of system ownership. This will further the development of a vibrant and healthy set of service providers in the 220 MHz band. As demonstrated by the 900 MHz SMR auctions, these incumbent service providers, in turn, are likely to constitute the primary constituency in the planned Phase II 220 MHz band auctions. The expeditious repeal of the 40-mile rule prior to the Phase II auctions will remove regulatory uncertainty regarding the ability of Phase I licensees to consolidate and expand their operations and will therefore enhance their ability to attract capital to meaningfully participate in the Phase II auction.

## II. The 40-mile Rule Has Outlived Its Usefulness

The public interest benefits realized through elimination of the 40-mile rule are not offset by any lingering advantages of the rule. The Commission originally implemented a 40-mile rule governing SMR services over 20 years ago to prevent warehousing of spectrum.<sup>5</sup> However, as the Commission has recognized in the 800 and 900 MHz bands, the licensing environment that prevails today has vastly diminished the specter of spectrum warehousing. This same licensing environment defines the 220 MHz band. The 40-mile rule, therefore, no longer serves any reasonable purpose in the band.

When eliminating the 40-mile rule in the 800/900 MHz band, the Commission recognized that the “40-mile rule no longer serves its intended purpose, and could in fact hamper the industry’s continued growth....”<sup>6</sup> The Commission reached this conclusion, in part, because of the fact that licenses in these bands were soon going to be auctioned.<sup>7</sup> Similarly, the Commission intends to auction future licenses in the 220 MHz band. Licensees in any of these bands who obtain their licenses at auction, paying fair market value for scarce spectral resources, simply cannot afford to warehouse spectrum. In addition, the Commission has adopted, or proposes to adopt, strict construction and operational requirements on licensees in the

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<sup>5</sup> *CMRS Third Report and Order*, 9 FCC Rcd at 8082.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

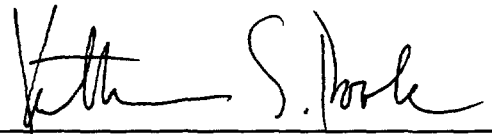
220 MHz band.<sup>8</sup> These requirements provide an additional incentive for licensees to build out their systems in a timely manner, or lose their license altogether.

By effectively tackling the problem of warehoused spectrum in the 220, 800, and 900 MHz bands through competitive bidding and construction deadlines, the Commission has obviated the need for the 40-mile rule in each of these bands. The Commission has already recognized this axiom in the 800 and 900 MHz bands. It should now take the same step in the 220 MHz band and abolish this outdated rule.

For these reasons, Securicor urges that the FCC adopt its proposal and repeal Section 90.739 of its Rules.

Respectfully submitted,

SECURICOR RADIOCOMS LTD.

By: 

Robert B. Kelly  
Katherine S. Poole  
KELLY & POVICH, P.C.  
1101 30th Street, N.W., Suite 300  
Washington, DC 20007  
(202) 342-0460

Its Counsel

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<sup>8</sup> *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, PR Docket No. 89-552, GN Docket No. 93-252 at ¶¶ 29-30 (released Jan. 26, 1996); see also *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, FCC 95-312 at ¶¶ 88-96 (released Aug. 28, 1995).